

December 17, 2010

BY HAND

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

**Re: Complaint of Sky Angel U.S., LLC against Discovery Communications, LLC
et al. for Violation of the Commission's Competitive Access to Cable
Programming Rules (non-docketed proceeding)**

Dear Ms. Dortch:

12-80

Discovery Communications, LLC ("Discovery"), by its counsel, hereby responds to the letter submitted by counsel for Sky Angel U.S., LLC ("Sky Angel") on December 10, 2010 ("Sky Angel Letter"). Sky Angel's attempt to submit a lengthy pleading reiterating arguments already in the record should be firmly rebuffed.

Discovery has set forth a detailed explanation of why Sky Angel is not an MVPD.^{1/} As Sky Angel repeatedly affirms, it has already "fully" argued on the record its contrary position.^{2/} As such, the extensive arguments reiterating these points in the Sky Angel Letter are unnecessary. Indeed, the Commission's rules forbid these types of superfluous filings outside

^{1/} See, e.g., Answer to Program Access Complaint of Discovery Communications LLC, filed April 21, 2010, at 12-18. Discovery also demonstrated that Sky Angel does not offer "channels" of video programming, see Discovery Communications' Opposition to Sky Angel's Emergency Petition For Temporary Standstill (filed April 12, 2010) at 14-15 & n.34. Sky Angel's attempt to supplement its arguments on this issue is time-barred, see n.3, and in any event, its assertion that "Congress used 'multiple channels' to mean multiple programming networks," Sky Angel Letter at 3, cites no support whatsoever and is inconsistent with the Media Bureau's finding that the Act's definition of "channel" is directly relevant to the definition of MVPD. *Sky Angel U.S., LLC, Emergency Petition for Temporary Standstill*, Order (April 21, 2010), ¶ 7.

^{2/} Sky Angel Letter at 2, 3. Sky Angel's contention that Discovery "falsely implies" that the Bureau has concluded that Sky Angel is not an MVPD, Sky Angel Letter at 1, is utterly without merit. Indeed, Discovery did not "impl[y]" anything about the Bureau's conclusion, but rather quoted directly from the Bureau Order. See Discovery Letter of December 3, 2010 ("the Media Bureau has likewise concluded that 'Sky Angel . . . has not carried its burden of demonstrating that it is likely to succeed in showing on the merits that it is an MVPD entitled to seek relief under the program access rules'").

the pleading cycle, recognizing the unnecessary expense and time that both the parties and the Commission incur in connection with responding to them.^{3/}

Sky Angel's assertion that Discovery's choice not to engage in repetitive back-and-forth on these issues is somehow a "concession" that it agrees with Sky Angel's characterization of the facts^{4/} is also explicitly contradicted by Commission rule.^{5/} While not relevant to Sky Angel's program access claim, the fact is that Discovery has not granted DISH the right to distribute its programming services over the Internet. No doubt, many users of YouTube have, without Discovery's permission or knowledge, uploaded Discovery programming and distributed it via the Internet. But the unauthorized actions of consumers of Discovery programming do not have program access implications or convert Sky Angel into an MVPD. Like the actions of YouTube users, DISH's implementation of Sling technology is not a question within FCC jurisdiction. Discovery is, of course, considering the implications of the DISH technology and the appropriate manner to resolve those implications, but any such considerations are outside the scope of this proceeding.

Respectfully submitted,

Tara M. Corvo ec.

Tara M. Corvo

COUNSEL FOR DISCOVERY COMMUNICATIONS, LLC

cc (via e-mail): William Lake
Steven Broeckaert
Nancy Murphy
Michael Perko
Mary Beth Murphy
David Konczal
Diana Sokolow

^{3/} See, e.g., *Application of US WEST COMMUNICATIONS, Inc.*, 13 FCC Rcd 4173, ¶ 2 n.14 (1997) (letters filed outside the pleading cycle that were not authorized or requested by the Commission constitute unauthorized pleadings and the FCC will not consider their content) (citing 47 C.F.R. § 1.45(c)); *Thomas M. Schaefer d/b/a Strategic Video vs. Continental Cablevision Stockton, California, Lodi, California For Leased Access Channels*, 11 FCC Rcd 13898, ¶ 1 n.2 (1996) (same) (citing 47 C.F.R. § 76.7).


^{4/} Sky Angel Letter at 5 (arguing that Discovery "did not refute" the fact that "Discovery channels are being distributed by DISH Network over the Internet" and so has conceded the point).

^{5/} 47 C.F.R. § 76.7(c)(2).

CERTIFICATE OF SERVICE

I, Ernest Cooper, do hereby certify that on this 17th day of December 2010, a true and correct copy of the foregoing Response to Sky Angel was served on counsel for Sky Angel via first class mail and electronic mail:

Charles R. Naftalin
Leighton T Brown II
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006



Ernest Cooper
Attorney
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004